

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF COLUMBIA

THE H.D.D. COMPANY, INC., A CORPORATION
OF OREGON, an Oregon corporation,

Plaintiff,

vs.

SNC-LAVALIN CONSTRUCTORS INC., a Delaware
corporation,

Defendant.

Case No. 18CV10235

PETITION TO APPOINT MEDIATOR

PETITION

Pursuant to ORS 36.190, Plaintiff The H.D.D. Company, Inc., A Corporation of Oregon ("HDD") respectfully petitions the Court to issue an Order appointing Judge Carol Park-Conroy or Mike Scott as mediator in the above-captioned judicial proceeding in accordance with the parties' contractually agreed stipulation to mediate. This Petition is supported by the points and authorities below, the Declaration of Dan Gragg ("Gragg Dec."), and the records and pleadings on file.

POINTS AND AUTHORITIES

I. THE PARTIES AGREED TO MEDIATE THIS MATTER

Plaintiff HDD and defendant SNC-Lavalin Constructors Inc. ("SNC-Lavalin") (collectively the "Parties") entered into a written agreement related to constructing a new underground

1 pipeline to feed natural gas from Mist to PGE's Port Westward electric generation facility
 2 located in Clatskanie (the "Subcontract"). Gragg Dec. ¶12, Ex. 1. Concurrent with the filing of
 3 this Petition, HDD has also filed a Demand for Arbitration asserting claims in against SNC-Lavalin
 4 arising out of the services provided relative to the Subcontract.

5 Pursuant to the Subcontract's terms, either HDD or SNC-Lavalin are entitled to
 6 mediation of any dispute arising between them. Gragg Dec. ¶12, Ex. 1. Specifically, General
 7 Condition 20.5 of the Subcontract states in pertinent part:

8 20.5 MEDIATION

9 **Any claim, dispute or other matter in question arising out of or related**
 10 **to this Agreement shall be subject to mediation as a condition**
 11 **precedent to arbitration or the institution of legal or equitable**
 12 **proceedings by either Party.** Request for mediation shall be filed in
 13 writing with the other Party to this Agreement. The request may be
 14 made concurrently with the filing of a demand for arbitration but, in such
 15 event, mediation shall proceed in advance of arbitration or legal or
 16 equitable proceedings, which shall be stayed pending mediation for a
 17 period of sixty (60) days from the date of filing, unless stayed for a longer
 18 period by agreement of the Parties or court order.¹ **If the Parties cannot**
 19 **agree on the choice of a mediator, the Parties shall apply to the local**
 20 **state court to appoint a mediator.** The Parties shall share the mediator's
 21 fee and any filing fees equally. The mediation shall be held in Portland,
 22 Oregon unless another location is mutually agreed upon. Written and
 23 signed agreements reached in mediation shall be enforceable as
 24 settlement agreements in any court having jurisdiction thereof.
 25 (emphasis supplied)

20 ORS 36.190 provides a mechanism by which the Court can order parties to mediation
 21 upon their written stipulation. "It is the policy and purpose of [ORS 36.190] that, when two or
 22 more persons cannot settle a dispute directly between themselves, . . . the disputants be
 23 encouraged and assisted to resolve their dispute with the assistance of a trusted and
 24 competent third party mediator whenever possible . . ." ORS 36.100. Such is the case at bar.

25 _____
 26 ¹ HDD will agree to stay the arbitration proceedings for a period of sixty (60) days from the date
 of filing.

HDD and SNC-Lavalin have agreed to mediate and they are actively working on selecting a mediator; the process has simply stalled out. Although the Parties have exchanged proposed lists of mediators, and will undoubtedly agree on the selection of a mediator, the Parties need the assistance of the Court to encourage the process and allow timelines to be maintained.

II. PROPOSED MEDIATORS

The potential mediators identified by the Parties thus far are as follows ("Mediators"):

<u>Proposed by:</u>	<u>Mediator</u>	<u>Conflict</u>
HDD	Mike Schoenfeld	N
	Peter Ippolito	N
	Judge Richard Silver (Ret.)	N
	Mike Scott	N
	Guy Randles	Y
	Judge Carol Park-Conroy (Ret.)	N
SNC-Lavalin	Richard Alexander	Y
	Doug Oles	Y
	Deborah Ballati	N

For the Court's reference, a brief bio or CV is attached for each of the proposed Mediators. Two of the proposed Mediators, Guy Randles and Richard Alexander, work for the law firm Stoel Rives LLP. Stoel Rives LLP represents Northwest Natural Gas, one of the project owners in this very matter, and is therefore unfortunately conflicted. One of the other proposed Mediators, Doug Oles, works for Oles Morrison Rinker & Baker, a firm that has represented SNC-Lavalin in the past. HDD respectfully requests that the Court appoint Judge Carol Park-Conroy or Mike Scott as Mediator.

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CONCLUSION

Based on the foregoing, HDD respectfully requests that the Court issue an Order appointing Judge Carol Park-Conroy or Mike Scott as Mediator and directing the Parties to mediate this dispute within sixty (60) of the date of the entry of the Order.

DATED: March 14, 2018

SEIFER, YEATS, ZWIERZYNSKI & GRAGG, LLP

s/ Dan Gragg

Dan Gragg, OSB 96066

gragg@seifer-yeats.com

Tara M. Johnson, OSB 064356

taraj@seifer-yeats.com

Of Attorneys for Plaintiff The H.D.D. Company, Inc., A
Corporation of Oregon

Trial Attorney: Dan Gragg, OSB 96066

MurphyAustin

ATTORNEYS

D. Michael Schoenfeld

Partner

916-446-2300 x3089

mschoenfeld@murphyaustin.com

Practice Area(s): Construction, Public Contracts

Overview

Mike Schoenfeld's practice actively involves all aspects of the construction industry, both federal and state, from drafting and negotiating of contract language, licensing issues, bid protests, consultation during construction and through dispute resolution. Mike's clients include public and private owners, general contractors, subcontractors, suppliers, sureties, construction managers, and consultants. Matters frequently involve issues concerning contract claims, delay, loss of productivity, liens, stop notices, and bond claims. Mike has a particular interest and expertise in ADR processes, both as an advocate as well as an active mediator and arbitrator.

Mike has successfully acted as a mediator on more than 140 matters. Virtually all of the cases have concerned the construction industry, with many involving multiple parties. As an advocate, virtually all of the matters for which Mike is retained as counsel resolve themselves through the mediation process. Overall, Mike has participated in well over 300 mediations and successfully negotiated several takeover agreements with sureties related to general contractor and subcontractor defaults.

Mike is listed in the 2007 through 2018 editions of *The Best Lawyers in America*, the 2007 through 2017 editions of *Northern California Super Lawyers*, and in *Sacramento Magazine's* Top Lawyers List in 2015 through 2017. He was named in the *Sacramento Business Journal's* 2017 "Best of the Bar" list which recognizes top local attorneys who have been nominated by their peers and vetted by a panel of their peers. He is rated AV Preeminent® by Martindale-Hubbell.

Mike was named *Best Lawyers' Sacramento Construction Lawyer of the Year in 2015 and 2017*.

Representative Matters

- Monteleone & McCrory (Los Angeles) (1981 - 1984) - Associate



Memberships

- American Bar Association, Public Contract Law Section
- AGC Legislative and Legal Advisory Committees
- Sacramento County Bar Association, Construction Law Section

Bar Admissions

- State Bar of California

Education

Hastings College of Law
J.D., 1981

University of California, Davis
B.A., 1978
Political Science



involved with construction law matters.

- Thelen, Marrin, Johnson & Bridges (San Francisco) (1984 - 1988) - Associate involved with construction law matters.
- Diepenbrock, Wulff, Plant & Hannegan, LLP (Sacramento) (1988 - 1998) - Associate through 1992; Partner thereafter; all efforts concerned construction law and litigation.
- Murphy Austin Adams Schoenfeld LLP (Sacramento) (1999 - Present) - Partner involved in construction law matters.

Awards

- Named *Best Lawyers' Sacramento Construction Lawyer of the Year* (2015 and 2017)
- Listed in *The Best Lawyers in America* (2007-2018)
- Listed as a Super Lawyer in *Northern California Super Lawyers* (2007-2017)
- Named in the *Sacramento Business Journal's* "Best of the Bar" list (2017)
- Named in *Sacramento Magazine's* Top Lawyers List (2015-2017)
- AV[®] Preeminent[™] Peer Review Rating from Martindale-Hubbell (1993-Present)

Peter J. Ippolito

Peter J. Ippolito is Of Counsel with Andrews • Lagasse • Branch & Bell LLP.

Mr. Ippolito is a litigator with nearly 50 years of experience in construction law, serving as Assistant General Counsel to the United States Army Corps of Engineers before building a name for himself as a zealous advocate for private construction industry clients in both state and federal courts and before administrative boards. Mr. Ippolito has tried more than one hundred cases covering all areas of construction law, including federal government and private construction disputes, architect and engineer malpractice, and design and construction defect among others. He has extensive experience with hotel, medical facility, educational facility, process piping and heavy construction disputes, representing owners, public agencies, developers, general contractors, all levels of subcontractors, design professionals, and suppliers.

When not litigating, Mr. Ippolito works closely with his clients to help them attain their business goals and prevent litigation. He represents clients in contract negotiations and claims preparation, and he regularly prepares complex construction contracts.

Mr. Ippolito also focuses his practice on mediation and arbitration. He is recognized as a premier mediator for complex construction disputes throughout California, Nevada, Hawaii, and other states. He serves as an arbitrator for the American Arbitration Association (AAA) and is appointed to AAA's Nationwide Complex Construction Arbitration and Mediation Panels. Mr. Ippolito is also an arbitrator with the California Office of Administrative Hearings arbitrating disputes between contractors and state and local agencies.

Mr. Ippolito is a frequent guest speaker for construction industry groups. He has written numerous articles on construction issues and is the co-author of the Western Region Chapter of the Wiley Construction Law Update. Ippolito has been repeatedly recognized as one of America's Leading Business Lawyers by Chambers USA and is listed in the 2007 edition of The Best Lawyers in America in the practice area of Construction Law and Litigation - Construction in 2017. He has been recognized as a Southern California Super Lawyer from 2007 to 2014. He has also received Martindale-Hubbell's highest rating (AV Peer Review Rated) for his legal ability and ethical standards.

A graduate of the Virginia Military Institute in 1963 and a former United States Army officer who served in Vietnam, Mr. Ippolito holds a J.D. from the University of Notre Dame (1966) and a LL.M. in Taxation from George Washington University (1975).

Mr. Ippolito is a member of the American Bar Association (including the litigation and public law sections), the San Diego County Bar Association, and the San Diego Trial Lawyers

3/12/2018

Peter J. Ippolito is Of Counsel with Andrews • Lagasse • Branch & Bell LLP |

Association.

He is admitted to practice before all state and federal courts in California and the District of Columbia, the US District Court for the District of New Jersey, the Federal Boards of Contract Appeals New Jersey, and the US Court of Federal Claims.

Mr. Ippolito can be contacted at:

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Hon. Richard M. Silver (Ret.)

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General Biography

Hon. Richard M. Silver (Ret.) highly regarded for maintaining a balance between fairness and efficiency, has gained the respect of attorneys for his tremendous intellect, tenacity, and his ability to get to the heart of issues quickly. During his 25 years as a Superior Court Judge in Monterey County and since joining JAMS in 2002, Judge Silver has successfully negotiated or arbitrated hundreds of disputes. Judge Silver brings extensive experience in business and commercial disputes, real property and broker issues, construction defect and delay cases, family and probate matters, employment related disputes including wage and hour class actions, and complex personal injury actions.

Representative Matters

Business Commercial

- Settlement of breach of contract and fraud claims involving a major hotel and American Savings and Loan during the Saving and Loan crisis
- Arbitration of dissolution and related claims of medical partnership
- Arbitration of very emotional and contentious dissolution of accounting partnership
- Settlement of breach of contract and fraud claims concerning the purchase of wine bottling equipment

Class Action

- Participated in settlement of complex multi-state class action concerning polybutylene pipe used in mobile homes and residences and involving competing national class actions
- Successfully negotiated several complex wage and hour class actions

Construction

- Construction defect and delay cases involving public work contracts with claims by the district, general contractor, architect, and multiple sub-contractor
- Settlement of defect and delay claims concerning the construction of an airport terminal and involving claims by the Airport District, Construction Manager, Architect, General Contractor and sub-contractors and involving claims in bankruptcy

Employment

- Mediation and arbitration of numerous wrongful termination cases involving claims of sexual harassment, racial, gender, or sexual discrimination, and breach of contract
- Resolution of wage and hour class actions involving claims of overtime, meal, and break violations

Family

- Settlement of highly emotional family dispute involving substantial property holdings in several countries

Personal Injury

- Wrongful death claim against sheriff, jail staff, and county for failure to provide medical assistance

Professional Liability

- Contract and fraud claims against an attorney related to the drafting of multiple trust documents, and other professional legal malpractice cases

Real Estate

- Numerous cases involving the purchase and sale of real property including claims against and by the brokers, failure to disclose defects, and mold issues
- Settlement of family law cases concerning complex community property issues involving valuation and division of businesses, real property, and support issues

Honors, Memberships, and Professional Activities

- Recognized as a "Top Neutral," *Daily Journal*, Top California Neutrals List, 2013
- Member, California Judges Association, 1977-present; (Chair, Civil Law and Procedure Committee, 1998-2000)
- Past Chairman, Board Member Emeritus, Honorary Doctorate of Law, Monterey College of Law
- Judicial Council Family Court Service Advisory Committee (Chairperson, 1987-1990)
- Faculty, California Center for Judicial Education and Research (CJER); California Judges Association; National Judicial College
- Captain, U.S. Army, 1966-1968, Bronze Star U.S. Army Medal Honor, 1st Degree (Civic Action), presented by the Republic of Vietnam

Background and Education

- Judge, Monterey Superior Court, 1977-2002 (Presiding Judge, 1980, 1986; Asst. Presiding Judge, Monterey Branch, 1984, 1987, 1996, 2000-2002; Civil Supervising Judge, 1996-1998, 2000-2002)
- Partner, Heisler, Stewart, Silver & Daniels, Carmel, CA, 1969-1977
- LL.B., University of California, Berkeley School of Law (formerly Boalt Hall School of Law), 1966
- B.S., University of California Berkeley, 1963

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- Thomas J. Murphy
- Bob L. O'Halloran, Jr.
- Michael J. Scott



Attorneys

Michael J. Scott

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Mike has acted as a neutral in over 2000 alternative dispute resolution matters throughout the Western United States. Each of these matters typically involves somewhere between six to 20 different counsel, parties and insurers. He is the managing partner of the Scott Hookland LLP which is located in the Portland, Oregon suburb of Tigard.

Mike's service as a neutral has primarily related to construction/design and defect claims, insurance coverage issues, legal malpractice claims, substantial personal-injury/employer liability matters, business issues as well as damage issues arising from: condominiums, townhomes, apartments, single family residences, schools, public improvements, landslides, shopping centers, office buildings, manufacturing facilities, hospitals, hotels/motels, fractional ownerships and subdivisions.

Mike's service as a mediator or as a referee has often been under a court-issued Case Management Order.

Bar Admissions and Professional Activities and Recognitions:

- Oregon State Bar, admitted 1983
- Construction Law Section member (Chairperson, 1987-88)
- Continuing Legal Education (CLE) Committee member, 1994-97
- Alternative Dispute Resolution Section member
- U.S. District Court, District of Oregon, 1984
- Selected to Best Lawyers in America for Construction Law, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016
- Selected to Best Lawyers in the Pacific Northwest 2016
- Selected as Best Lawyers' Lawyer of the Year for Litigation-Construction 2014, 2015, 2016
- Selected to Super Lawyers for Alternative Dispute Resolution and Construction Litigation, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018
- Oregon Law-Related Education Program nka Classroom Law Project Member, 1985-90 Chairperson, State Board of Directors, 1988-90
- Northwestern School of Law of Lewis & Clark College Alumni Association President, 1990-91
- Multnomah County Bar Association
- Washington County Bar Association
- American Bar Association Forum on the Construction Industry member



3/12/2018

Scott-Hookland LLP | Michael Scott Attorney

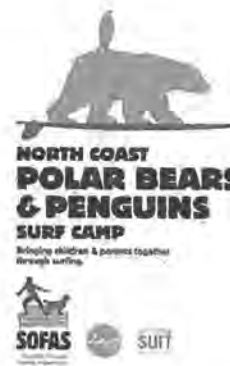
Education:

Pacific University, Forest Grove, Oregon B.A., with high honors, 1978

Northwestern School of Law of Lewis and Clark College, Portland, Oregon J.D. 1983

Community Activities:

- Seaside Oregon Family Adventures Surfing (SOFAS), Founder and Board of Directors 2014 - , Bringing families together through surfing. Providing free/low cost "Polar Bears & Penguins" surf camps for North Coast parents and children which are offered in conjunction with the Seaside Surf Shop, Oregon Surf Adventures and the Clean-Up Set. <https://www.sofasurfing.org/>
- "Treasure the Beach", A SOLVE Project Oregon affiliated beach clean-up program for Seaside Oregon, Co-Founder 2006 -
- SOLVE awards: 2007: Best First Time Project, 2013: Best Community Group in the State
- National Small College Rugby Organization (NSCRO), Member National Advisory Board, 2012 - 2013
- Willamette University, Salem, Oregon. Willamette Rugby Football Club, Head Coach 2007 - 2013
- Pacific Northwest Rugby Football Union, Mens Division 2 Collegiate Coordinator, 2008 - 2013
- Beaverton Barbarians Rugby, (U-19) Head Coach 2006 - 2009
- Friends of Beaverton Football (High School), President 2005 - 2008
- Beaverton Football Association, Inc. dba Beaverton Football, (Youth Football) President 1999-2004, Coach 1999-2004
- Tualatin Valley Youth Football League, Wellnitz Sportsmanship Award Recipient 1999, 2000, 2001 and 2004, Lomardi/Montavon Division Co-President 2000-2003, THPRD Field Liaison 2000-2003
- Raleigh Hills Little League, Coach/Manager 1995-2002; T-Ball Coordinator 1998-2002
- West Hills Soccer, Board Member 1997-98, Coach 1994-98
- Tigard Chamber of Commerce, President 1989-90

**Recent Publications and Presentations:**

- Presenter: Oregon and Washington Panels at 5th Annual Pacific Northwest Construction Defect Seminar (2014)
- Mediation of Oregon Construction Disputes: Time for a Change..... or Time for a Checklist of the Who, What, Why, When, Where and How; The Seminar Group (2011)
- Arbitration and Mediation CLE, Supplements for Chapters on Using Arbitration and Commercial Arbitration, Oregon State Bar, Co-Author (2008)
- Construction Defect Claims, Clark County Washington Bar Association, Co-Author (2005)
- Oregon Construction Law CLE, Chapter on Construction Liens, Oregon State Bar, Author (1989, 1993, 1997) Co-Author (2004)
- Law for Design Professionals in Oregon, Chapt. "Mock Mediation of a Condominium Project," Lorman Business Center, Inc. (2003)
- Construction Claims and Bankruptcy Court, Multnomah County Bar CLE, Co-Author (2002)
- Oregon and Washington Construction Lien and Bond Law, Lorman Education Services, Co-Author (2001)

Personal Information:

Born Pendleton, Oregon, January 4, 1956

Married: wife Laurie A. Scott; Two Married sons, Stephen M. Scott and wife Christine and Matthew L. Scott and wife Laura.



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Service Areas

Construction and Design

Litigation

Real Estate, Development &
Construction

Bar Admissions

Oregon

Washington

U.S. District Court for the
Districts of Oregon and
Washington

U.S. Court of Appeals for the
Ninth Circuit

U.S. Court of Federal Claims

Education

University of California
(Berkeley), Boalt Hall School
of Law, J.D., 1977

University of Notre Dame,
B.A., 1974, with highest
honors; Phi Beta Kappa

ABOUT GUY

Guy Randles is a senior partner in the firm's Construction and Design section and Development Law group. With extensive contract negotiation, claims, litigation, and mediation experience, he concentrates his practice principally on construction, design and public procurement matters and those companies involved with the construction and design industry. Guy has successfully represented a full range of clients in major development projects throughout the geographic area. Guy is also in much demand as a mediator and arbitrator to resolve third party disputes. A native Portlander, Guy has been active in numerous bar and community activities.

EXPERIENCE

- Interim construction counsel for \$1.5 billion project in San Francisco.
- Lead counsel for design and construction contracts for multiple office and commercial buildings and medical facilities in the Portland area.
- Lead counsel in multiple litigation matters involving construction defects and claims on major projects.
- Mediator and arbitrator for multiple construction-related disputes (Oregon and Washington).
- Lead counsel for public bodies in litigation over major public works projects.
- Lead counsel in arbitrations over construction joint venture dissolutions.
- Lead counsel in arbitration concerning construction of Washington jail project.
- Lead counsel in multiple industrial facility projects.

HONORS & ACTIVITIES

Professional Honors & Activities

- Included in *The Best Lawyers in America*® (currently: Construction Law, Litigation-Construction), 2003-2018
- Listed in *Oregon Super Lawyers*® (Construction Litigation, Surety, Alternative Dispute Resolution), 2006-2017
- Member of practice group nationally ranked Tier 1 for Construction Law, 2010-2018 | Construction Litigation, 2015-2018, by *U.S. News – Best Lawyers*® "Best Law Firms"
- Member and Chair, Oregon Commission on Judicial Fitness and Disability
- Member and past legal counsel to Board of Directors, Oregon-Columbia Chapter of the Associated General Contractors
- Oregon State Bar, Judicial Administration Committee
- Construction forum member, American Bar Association
- Multiple year Co-Chair, Annual Oregon Construction Law, The Seminar Group
- Member, Construction Law Section, Oregon State Bar and Washington State Bar
- Member, Arbitrator and Mediator Panels, American Arbitration Association
- Public Procurement and Private Construction Law Section, Washington State Bar

Civic Activities

- Board of Directors, Oregon Geographic Names Board (currently)
- Past Board of Directors and former President, Oregon Historical Society
- Board of Directors and former Chairman, Catholic Charities
- Previous Co-Chair, Campaign for Equal Justice and current advisory committee member
- Past Member, Board of Directors, Oregon Independent College Fund; and board secretary
- Past Member, Board of Directors and former Chairman, Multnomah County Legal Aid Service
- Past Jesuit High School Board of Trustees and former Chairman
- Notre Dame Club of Oregon

INSIGHTS & PRESENTATIONS

- "Contracts Are King, But Don't Forget Tort Law," *The Daily Journal of Commerce*
- "Limitation of Liability Clauses: Nothing to 'LOL' About," *The Daily Journal of Commerce*
- "Subcontracting Pitfalls: Making The Flow Down Work," *The Daily Journal of Commerce*
- "The Litigation Process: An Upper Division School of Hard Knocks," *The Daily Journal of Commerce*
- "You Can't Make This Stuff Up: The Human Condition Meets Construction

- Law," *The Daily Journal of Commerce*
- "Don't Ignore the Importance of Your Contracts-The Courts Won't," *The Daily Journal of Commerce*
 - "Who Can Afford to Litigate These Days? Use ADR," *The Daily Journal of Commerce*
 - "Contractors React to Changing Conditions," *The Daily Journal of Commerce*
 - "Legal Relationships Between Owner/Design Professional/Prime Contractor/Subcontractors/Suppliers," *Construction Law*, Oregon State Bar CLE
 - "Contracts and Payment are Tied Together," *The Daily Journal of Commerce*
 - "Being Forewarned is Being Forearmed," *The Daily Journal of Commerce*
 - "No Good Deed Goes Unpunished with Performance Bonds," *The Daily Journal of Commerce*
 - "Aftermath of Bridge's Collapse: Here Come the Lawyers," *The Daily Journal of Commerce*
 - "With Slowdown Approaching, Time to Put up the Guards," *The Daily Journal of Commerce*
 - "Project Delayed May Be Damages Denied," *The Daily Journal of Commerce*
 - "Cost-Plus Contracts' True Cost not Obvious," *The Daily Journal of Commerce*
 - "Liquidated Damages," *Construction Law Handbook*, Aspen Law and update
 - "A Trap for the Unwary: Joint Ventures Must Have Their Own Contractor's Licenses," *The Daily Journal of Commerce*
 - "Negotiating Construction Contracts for Owner—Top 15 Issues in AIA Contracts," Multnomah Bar Association
 - "Oral Contract Worth the Paper It's Not Written On," *The Daily Journal of Commerce*
 - "Notice and Claim Procedures: Claimant Beware, Especially in Washington," *The Daily Journal of Commerce*
 - "Performance Bonds: What's to Say that the Surety Will Perform?," *Real Estate Finance Journal*
 - "Construction Claims," *Contractors' Management Guide*, Oregon-Columbia Chapter of Associated General Contractors
 - "Design-Build Projects: Fundamental Principles and Risk Allocations," *Cambridge Institute*



Hon. Carol Park-Conroy (Ret.)

Case Manager

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General Biography

Hon. Carol Park-Conroy (Ret.) has over 35 years of experience as a litigator, judge, and neutral in government contracts and commercial cases. While serving as a trial judge on the Armed Services Board of Contract Appeals (ASBCA) for 22 years, she presided over a broad range of construction and commercial disputes arising from manufacturing, service, supply, and other business contracts with the federal government. She is highly skilled at managing cases with complex factual and legal issues.

Judge Park-Conroy has extensive experience as a mediator, neutral case evaluator, and arbitrator and became one of the most sought-after dispute resolution neutrals at the ASBCA. She is recognized for her ability to quickly comprehend complex facts and focus parties on pivotal issues and is known for her thorough preparation, perseverance, and commitment to efficient resolution of disputes. As one corporate counsel in a mediation put it, "she knows how to keep the parties talking."

Representative Matters

- **Business/Commercial**
 - Disputes involving specialized business sectors such as computer science and information systems, research and development, technology, and aerospace and other businesses supplying manufactured products and commodities, such as food stocks, computers, aircraft, vehicles, vehicle parts and equipment, services for professional office, technical, and management support, health care personnel, and custodial, maintenance, and security workers
 - Successfully mediated complex claims valued in excess of \$2 billion relating to an Army contract for logistics modernization with a computer services company with issues relating to contract interpretation and clause renegotiations, extra work, cost allocation and accounting, unrecovered investment in software, breach of intellectual property license rights, contract extensions and renewal terms
 - Mediated to settlement prime, subcontractor, and government disputes in excess of \$150 million relating to aircraft purchase terms and conditions and costs incurred due to termination of aerial refueling tanker contract
 - Settled delay claims associated with provision of security escorts for vehicle recovery convoys in Iraq

- **Contracts**
 - Disputes involving contract formation, interpretation, performance and breach and fraud involving primes, subcontractors and joint ventures arising in manufacturing, service and supply contracts with related issues: including contract cost accounting and defective pricing, formation, Department of Labor wage rates and labor standards, with some surety, bankruptcy, and environmental remediation
 - Resolved False Claims Act case brought by Department of Justice involving occupational conflicts of interest following remand to district court by D.C. Circuit Court of Appeals
 - Settled contractor claims for extra contractual aircraft maintenance work pending at the ASBCA and federal government civil fraud case pending in U.S. District Court in combined mediation
 - Successfully mediated contract interpretation claims totaling \$150 million for F-22 aircraft tail-up costs
 - Mediated to settlement disputes involving contract interpretation and differing site conditions in environmental cleanup, Military Munitions Response Program
- **Construction**
 - Disputes involving housing, both new construction and renovation, buildings, including training facilities, hospitals, and aircraft hangers, water facility projects such as well drilling, water mains and pipelines, and major civil works projects, including roads, bridges, ocean piers, locks, dams and dredging
 - Mediated to settlement contractor and owner claims involving defective specifications, delay, changes and defective work in construction of Washington D.C. office building
 - Successfully mediated disputes valued at \$75 million associated with construction of the Seven Oaks Dam in California
 - Served as neutral in six-week proceeding and resolved \$40 million in disputes arising from multiple contracts for demolition and construction of housing units
 - Settled claims for delay, acceleration, and changed work in construction of pier at Naval Submarine Base, Groton, CT
 - Resolved claims relating to fabrication and installation of removable spillway weir at Lower Monumental Lock and Dam
- **Special Master/Discovery Referee**
 - Responsible for all pretrial matters on ASBCA docket, including issuance of comprehensive pretrial scheduling orders, protective orders, rulings on privilege, and discovery disputes

Honors, Memberships, and Professional Activities

- Recognized as one of "500 Leading Judges in America" by Lawdragon Magazine, 2006
- Member, ABA Section of Public Contract Law
 - Chair, 2011-2012
 - Fellow (for service in Section's leadership), 2012-present
 - Officer, 2004-2010
 - Council member, 1999-2002
 - Committees: Co-Chair, Alternative Disputes Resolution; Vice Chair, Contract Claims and Dispute Resolution
 - Liaison to ABA Section of Dispute Resolution Advisory Committee
- Member, ABA Forum on the Construction Industry
 - Project Performance Division
 - Dispute Avoidance & Resolution Division
- Member, ABA Section of Dispute Resolution
- Member, Boards of Contract Appeals Bar Association, Lifetime Achievement Award, 2011
- Member, National Association of Women Judges (Past Officer of Division 4)

Publications and Presentations

- "The ASBCA's Path to the 'Mega ADR' in Computer Sciences Corporation," The Procurement Lawyer, Vol. 49, No. 1, Fall 2013. Judge Park-Conroy's work mediating multiple disputes involving more than \$2 billion between Computer Sciences Corporation and the Government is highlighted in this article.
- Moderator, "Judges' Panel," 2015, 2014 and 2013 Federal Procurement Institutes, sponsored by the ABA Section of Public Contract Law, Annapolis, MD
- Panelist, Women in Construction Conference, October 2014
- Moderator, "Key Case Review: Impact of Federal Circuit, Board and Court of Federal Claims Decisions on Government Contract Law," annual educational program sponsored by Boards of Contract Appeals Judges and Bar Associations, 2014, 2013 and 2012
- Moderator, "ADR in an Era of Austerity," 2013 Contract and Fiscal Law New Developments Course, The Army Judge Advocate General's Legal Center & School, November 2013

- Speaker, "The Sequester Aftermath: A New Dawn for Mediating Government Contract Claims," with published paper, "Initial Consideration: The Statutory and Regulatory Framework Applicable to Government Contract Claim Mediations," ABA Annual Meeting, August 2013, jointly sponsored by Sections of Dispute Resolution and Public Contract Law
- Panelist, "Expert Testimony in Mediations," sponsored by ABA Section of Public Contract Law, Contract Claims & Dispute Resolution Committee, May 2013
- Panelist, "ADR Roundtable," sponsored by Boards of Contract Appeals Bar Association, November 2012 and November 2010
- Speaker, "Government Contracts 2012: Contract Disputes," sponsored by Practising Law Institute, with published paper "The Jurisdictional Status of Nonappropriated Fund Instrumentality Cases," September 2012
- Speaker, "Resolution of Claims and Disputes," Federal Bar Association, San Antonio Chapter, April 2012
- Speaker, "Government Contracts 2011: Contract Disputes – Most Significant Recent Decisions and Impact," sponsored by Practising Law Institute, September 2011
- Presenter, "Interest-Based Negotiation" at training seminars for U.S. Air Force at Andrews Air Force Base, January and November 2011
- Presenter on Mediation Techniques, U.S. Court of Appeals for the Federal Circuit Volunteer Mediator Seminar, October 2011
- Presenter, "Alternative Dispute Resolution at the Boards of Contracts Appeals," sponsored by ABA Section of Public Contract Law, Contract Claims and Dispute Resolution, Alternative Dispute Resolution, and Young Lawyers Committees, and Federal Interagency ADR Working Group, Contracts and Procurement Section, May 2011 and June 2010
- Presenter, "Alternatives in the Federal Circuit," Part II: "Alternative Dispute Resolution in Government Contract Cases at the Trial and Appellate Court Levels," sponsored by Federal Circuit Bar Association, Dispute Resolution and Government Contracts Committees, October 2010
- Speaker, "Government Contracts 2011: ADR in Government Contract Disputes," sponsored by Practising Law Institute, New York, March 2010
- Presenter, "ADR Philosophy at the ASBCA," to U.S. Department of Justice, Civil Division, Commercial Litigation Branch, National Courts Section, July 2009
- Author, "ADR in Federal Construction Contract Disputes: A Neutral's Perspective," 2003 Construction Law Update (Aspen 2003)

Background and Education

- JAMS, Dispute Resolution Neutral, 2013-present
- Administrative Judge, Armed Services Board of Contract Appeals, 1989-2013
- Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice and private practice
- Law Clerk, Honorable Joseph C. Waddy, U.S. District Court, D.C.
- J.D., *with honors*, George Washington University School of Law
- B.A., *cum laude*, University of Wisconsin, Madison

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ACCL Membership Directory

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Richard E. Alexander

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Education

Undergraduate: B. S. Oregon State University, 1966

Law School: University of Oregon School of Law

Career History

Stoel Rives LLP – since 1977 – Practice now limited to serving as an arbitrator, mediator or member of a dispute review or claims review board panel.

Alternative Dispute Resolution Experience:

Has served as a mediator or arbitrator in approximately 400 disputes for a period of more than 25 years on a wide range of complex construction and design disputes, including highway and road projects, technology facilities, condominiums, power plants (hydroelectric, nuclear and wind) and commercial projects that ranged from major league baseball parks and power plants with amounts in dispute of more than \$100,000,000 to single-family residences involving far less amounts. He is Chair of the Disputes Review Board for a \$5,000,000,000 nuclear power plant project and is listed on the Oregon Department of Transportation Claims Review Board, and the Disputes Review Boards for several projects for the Texas Department of Transportation, among others.

Professional Activities

- Named Portland, Oregon, Construction Lawyer of the Year – Best Lawyers 2011, 2012, 2013, 2015 and 2017
- Recipient of AGC "SIR" Award – 2011
- Selected as an Oregon "Super Lawyer," Construction and Surety
- Listed in "Best Lawyers in America," construction, construction litigation and professional malpractice law
- Listed in "International Who's Who of Construction Lawyers"
- Member of American College of Construction Lawyers
- National Group Advisory Board of the "Construction Contractor" by Federal Publications, Inc.
- Construction Industry Forum of the American Bar Association
- Construction Industry Arbitration Panel of the American Arbitration Association
- Associate member, American Institute of Architects
- Associate member, Construction Specifications Institute
- Associate member and past chair of the Legal Committee, Associated General Contractors of America, Inc. – Oregon/Columbia Chapter
- Member, Oregon State Board of Architect Examiners

American Arbitration Association Panel of Arbitrators, American Institute of Architects, Associated General Contractors, Construction Specifications Institute

Representative Articles, Publications, Speeches and Seminars

- Author, "Top 10 Cutting-Edge Trends in Alternative Dispute Resolution and Avoidance," Annual Meeting of the Oregon State Bar Construction Law Section, October, 2014
- Co-editor, The original book and all editions including the 2011 Supplement of Oregon State Bar CLE Book on Construction Law
- "Construction, Is Integrated Project Delivery the Solution," Daily Journal of Commerce, August, 2008
- Author, "The Good, Bad and Ugly of Standard Form Contracts, A Designer's Perspective," (2002)
- Chapter Author, "Subcontractor's Entitlement to Payment When Owner Fails to Make Payment," Aspen Construction Law Handbook (1999 and 2005 update)
- "What Every Construction Arbitrator Must Know about Issues of Contract, Formation, Interrogation and Enforcement," American Arbitration Association Retreat (October 2001)
- Author, "A Guide to the AIA Document B141-1997, Construction Briefings" (November, 1998)
- Chapter Co-author, Design-Build Process – "A Guide to Licensing and Procurement Requirements in 50 States and Canada" (Oregon and Nebraska Law) – Forum Committee on the Construction Industry (1997)
- Casenote Author, "Contractual Limitation of Liability Clauses for Design Professional
- Contracts, The Construction Contractor" (October, 1997)

- Co-author, "Architect-Engineer Liability Under Oregon Law," Cambridge, Institute (1994)
- Co-author, "Construction Law Under Idaho Law," Cambridge Institute (1994)
- Co-author, "Oregon Construction Law," Professional Education Systems, Inc. (1988 ed.)
- Chapter Co-author, "Suing the Construction Lender," Construction Litigation: Representing the Contractor, Wiley & Sons (1985)
- Co-author, "Oregon Construction Law," Professional Education Systems, Inc. (1983, 1984 and 1985 eds.)
- Past Editor, Oregon State Bar Construction Law Section Newsletter

Court Admissions

- Supreme Court of the State of Oregon
- United States District Court for the District of Oregon
- United States Court of Appeals for the Ninth Circuit
- United States Court of Federal Claims

Community Activities

- Board Member, Chess for Success
- Past Board Member of the University of Oregon Law School Deans Advisory Council
- Past Member of the City of Portland Seismic Review Task Force
- Past Member of the Board of Directors, Architectural Foundation of Oregon
- Past Legal Counsel to Associated General Contractors of America – Oregon Columbia Chapter

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General Biography

Douglas S. Oles, Esq. is recognized as a national leader in the practice of construction law and in various areas of public and private commercial contracts, with extensive experience in both litigation and transactional work. He has served as national chair of the American Bar Association Forum on the Construction Industry, the largest association of construction industry lawyers, and he has been elected as a Fellow of the American College of Construction Lawyers and an Honourary Fellow of the Canadian College of Construction Lawyers.

ADR Experience and Qualifications

Representative types of projects handled include:

- **Defense:** Government radar bases, military housing, military security gates
- **Casinos:** Major claims involving foundations, delay, lost casino profits, and contract termination
- **Contract Delay & Disruption Issues:** Many projects involving CPM schedules, critical path analysis, lost productivity, force majeure, and delay impact issues
- **Energy:** Coal-, gas-, and wood-fired power plants; hydroelectric plants; landfill gas generation facilities; power converter stations; power transmission lines
- **Forest industry contracts**
- **Geotechnical Engineering:** Large diameter drilled piers, deep soil mixing, tiebacks and shoring systems, Type I & Type II differing site conditions
- **Government:** Federal Cost Principles, Contract Disputes Act, and a wide variety of federal, state, and local contracts; museums, aquariums
- **Hospitals**
- **International matters**
- **Infrastructure:** Bridges, freeway interchanges, highways, tunnels, light rail systems, sewer lines, and pumping facilities
- **Maritime:** Piers, ship locks
- **Oil and Gas Refineries**
- **Real Estate:** Residential and commercial developments

- **Schools:** Public and private
- **Surety cases**
- **Technology:** Software licensing, wireless network issues, and antibody sales

Representative Matters

ARBITRATIONS

- Claim for damages by architect against project owner (sole arbitrator)
- Claims alleging breach of royalty agreement and a related mining permit, and issues relating to site restoration (member of arbitration panel)
- Claim for additional compensation by earthwork contractor against a public owner (sole arbitrator)
- Claim for contract balance and additional compensation on contract to deliver Heat Recovery Steam Generator in New Jersey (member of arbitration panel)
- Claim for differing site conditions, extra work, and delay on a public works pile driving project (sole arbitrator)
- Contractor claim of wrongful disqualification of bid on a public project (sole arbitrator)
- Claims for acceleration, delay, lost efficiency on a public contract (sole arbitrator)
- Action to clarify and enforce a mediated settlement of claims involving a commercial condominium in Lewiston, Idaho (member of arbitration panel)
- Dispute between Italian project owner and California construction contractor regarding delays and termination pricing in West Virginia (chair of arbitration panel)
- Dispute involving extra work and warranty issues on multi-unit residential development (sole arbitrator)

MEDIATIONS

- Mediated matter involving propriety of reclamation charges under a coal supply agreement. Involved utility co's and mine-mouth coal-fired generating facilities in Montana
- Mediated \$100 million+ dispute between general contractor and owner regarding construction contract to build coal power plant

MEDIATIONS, DISPUTE REVIEW BOARDS (DRBs), AND OTHER SETTLEMENTS

As counsel, Mr. Oles has handled settlement in the following matters:

Alaska

- Successful settlement of \$15 million+ claim by Canadian contractor and U.S. government regarding changes and delays on Alaska Native Health Hospital in Anchorage
- Successful settlement of \$10 million+ claim by Washington developer against U.S. government based on convenience termination of a power purchase agreement that called for construction of a new coal-fired energy plant at Gulkana
- Successful settlement of claims by electrical and mechanical contractors against U.S. government in connection with construction and retrofitting of Minimally Attended Radar (MAR) sites at Tin City and Cape Romanzof
- Successful settlement of claim by transmission line contractor on Terror Lake Dam, Kodiak Island
- Successful settlement of claim by Alaska contractor against Chugach Electric Association regarding withheld superior knowledge on Susitna River transmission tower project
- Successful settlement of claim by U.S./U.K. joint venture contractor against U.S. government on claims involving Type I differing site conditions and extra work on construction of Over-the-Horizon Radar Facilities on Amchitka Island

California

- Successful mediation of claim by foundation contractor against City of Folsom in connection with construction of American River Bridge
- Successful settlement of claims by foundation contractor for Type II differing site conditions against private retirement home developer at Dana Point
- Successful mediation of claims by shoring contractor against New York developer on high end commercial building in West Hollywood
- Successful mediation of multi-party case involving insurance indemnity claims arising from differing site conditions encountered on high-rise commercial building in downtown San Francisco

Montana

- Successful mediation of claims by mechanical contractor arising from delays and changes affecting construction of Ultra Low Sulphur Diesel facility at the Laurel refinery

Oregon

- Successful settlement of claims by Texas foundation contractor on major interceptor sewer project for City of Portland

Oregon, Utah, and California

- Successful mediation of dispute between Swedish design-build contractor adverse to a major U.S. engineering firm and the Los Angeles Department of Water & Power involving design, estimating, and construction on HVDC energy facilities in Intermountain, Utah and Sylmar, California, with claims in excess of \$100 million (U.S. Dist. Court for Oregon)

Washington

- Mediated settlement of claims by prime contractor for delays and extra work on construction of new elementary school in White Center
- Successful DRB-facilitated settlement of claims by electrical contractor based on delay and changes affecting work on new Tacoma campus for the University of Washington
- Successful settlement defending Missouri-based paint supplier against claims by Pierce County Recycling, Composting & Disposal, LLC, based on failure of paint system in a waste composting facility
- Successful mediation of \$2 million+ claim on behalf of a Seattle condominium homeowner association against contractor/developer and its insurer
- Successful settlement of claim by Canadian homeowner against Vancouver architect for defective design of residence at Point Roberts
- Successful settlement on behalf of homeowners against claims for additional compensation by contractor on 15,000+ square foot home in Woodinville
- Successful mediated settlements of multiple claims by Canadian prime contractor in connection with construction of the Chemistry and Electrical Engineering buildings on the University of Washington Seattle campus
- Successful mediated settlement of claims by foundation subcontractor against soil mixing subcontractor on a railroad undercrossing project in City of Kent
- Successful DRB-facilitated settlement of claims by a drilled shaft subcontractor against Washington State Department of Transportation, alleging defects in State-specified concrete design mix on Intermodal structure near Safeco Field, Seattle
- Settlement successfully defending Japanese contractor against claims by J.H. Kelly on a Tosco refinery project in Ferndale
- Successful mediated settlement of claims by native owned contractor against Equity Office Properties in connection with Columbia Center remodel in Seattle
- Successful settlement of claims by Texas refinery contractor arising from convenience termination of oil refinery by Doyon, Ltd.
- Successful settlement for the Town of McCleary against claims asserted by an earthwork trade contractor on a sewer project
- Mediated settlement of \$700,000 lien claim against title insurer on 98-unit residential condominium development

Brazil

- Successful settlement of claims alleging breach of an agreement to develop a wireless network for Brazilian owners headquartered in Sao Paolo

Guam

- Successful settlement of claims by Washington contractor against U.S. Navy involving work on power generation station in Guam

Netherlands

- Successful settlement of disputes arising between U.S. wireless developer and licensee in Europe

Honors, Memberships, and Professional Activities

- Admitted to practice, Washington and Alaska
- Recognized as a "Super Lawyer" by *Washington Super Lawyers* magazine, 2003, 2006-2015

- Recognized as a "Super Lawyer" in the Construction/Surety area by *Washington Law & Politics*, 2003, 2006-2010
- Listed in *The Best Lawyers in America in Construction Law*, since 2009
- Board member, American College of Construction Lawyers
- National chair, ABA Forum on the Construction Industry, 2005-2006
- Chair, ABA Forum Division on International Contracts, 1993-1997
- Fellow, American Bar Foundation
- Listed in *Who's Who in America* since 2008
- Listed in *The International Who's Who of Construction Lawyers* since 2007
- Martindale Hubbell AV rating for over 20 years
- Member, International Section of the Washington State Bar Association
- President, The Rainer Club, 2007-2008
- Member, British Institute of Archaeology at Ankara
- Editor, *International Construction Law – A Guide for Cross-Border Transactions and Legal Disputes*, American Bar Association, October 2009

Background and Education

- Mediator and Arbitrator, JAMS, 2009-present
- Partner, Oles Morrison Rinker & Baker LLP, 1987-present
- J.D., University of Washington, with honors
- A.B., History, Stanford University (with distinction and department honors), Phi Beta Kappa

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General Biography

Deborah S. Ballati, Esq. brings to JAMS a broad range of civil and commercial litigation experience, with an emphasis on construction and insurance coverage, earned over her 42 years as an attorney.

As a litigator, Ms. Ballati represented parties in the construction industry, including owners, contractors, subcontractors, sureties and design professionals. She has substantial experience with delay and defect claims arising out of commercial and residential construction projects, in addition to contract drafting negotiations and related insurance matters.

Ms. Ballati has also represented policyholders in pursuing coverage under all types of insurance policies, including primary and excess general liability, environmental, property, professional liability and employment practice liability policies.

Ms. Ballati served as the first female president of American College of Construction Lawyers (ACCL). She is recognized nationally for her expertise, and she lectures across the country on insurance and construction law.

ADR Experience and Qualifications

- Served as judge pro tem and arbitrator for the San Francisco Superior Court
- Served as an arbitrator on a number of commercial and construction arbitration panel
- Successfully negotiated hundreds of disputes to resolution over her 42-year career

Representative Matters

Selected Representations

As an advocate, Ms. Ballati worked on a wide array construction and insurance litigation, including the following representations:

- Represented a multi-campus California university in numerous large construction disputes involving student housing, scientific buildings and administrative buildings on various campuses. Matters involved delays, cost overruns and related damages.
- Represented large, international engineering companies in construction disputes involving a nuclear power plant, water and wastewater facilities, former military base cleanups and redevelopment and other projects.
- Represented an international architectural firm in construction matters involving a major regional transportation center located in a metropolitan area.
- Represented a major West Coast port and airport on substantial insurance coverage and construction claims and litigation.
 - Construction matters included disputes involving an airport parking structure, renovation and fortification of an airport perimeter dike, construction to create a public golf course and redevelopment of a former military base.
 - Insurance matters included environmental claims, public officials' liability claims, builders risk and property claims, construction coverage claims and placement and renewal of environmental, OCIP, property and liability insurance.
- Represented various public and private entities in large commercial disputes involving contract, antitrust, defamation and other matters.
- Served as an arbitrator in a number of commercial and construction disputes involving multiple parties and issues.
- Served as counsel for parties in numerous mediations over 30 years and as a mediator, special master or judge pro tem in many commercial disputes.

Honors, Memberships, and Professional Activities

- Member, California Bar Association
- Member, San Francisco Bar Association
- Member, Association of Business Trial Lawyers
- Member, California AGC Legal Advisory Committee
- American College of Construction Lawyers
 - President, 2011-2012
 - Fellow, 1997-present
- Adjunct Lecturer, Civil and Environmental Engineering, Stanford University, 2011-present
- Teacher and Chair, UC Hastings College of Advocacy
- *Best Lawyers'* 2017 San Francisco Litigation-Construction "Lawyer of the Year"
- *Best Lawyers'* 2014 San Francisco Construction Law "Lawyer of the Year"
- Consistently recognized as one of the leading construction attorneys in *Chambers USA* and *The Legal 500 United States*
- Northern California Super Lawyers, 2004-2017
- *Best Lawyers in America* (Construction, Litigation-Construction), 2003-2017
- Alumnus of the Year, UC Hastings, 2004
- Top 50 Women Northern California Super Lawyers, 2004-2014
- 10 "Most Highly Regarded Individuals" in Construction, *Who's Who Legal*, 2012
- "Top 75 Women Litigators" in California, *Daily Journal*, 2011
- Northern California Real Estate Women of Influence, *San Francisco Business Times*, 2011
- Chair, American Bar Association Forum on the Construction Industry, 2002-2003
- Member, Governing Committee, Forum Committee on the Construction of the American Bar Association, 1997-2000

Background and Education

- J.D., University of California, Hastings College of the Law, 1975
 - Order of the Coif
 - Thurston Society
- B.A., Stanford University, 1972
 - Phi Beta Kappa